

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

JAMES CURTIS HOWETH,)
)
Plaintiff)
)
vs.) No. CIV-05-734-C
)
JOHN WHETSEL and THE OKLAHOMA)
COUNTY BOARD OF COUNTY)
COMMISSIONERS,)
)
Defendants)

ORDER ADOPTING REPORT AND RECOMMENDATION

This civil rights action brought by a pretrial detainee, proceeding pro se, was referred to United States Magistrate Judge Valerie K. Couch consistent with the provisions of 28 U.S.C. § 636(b)(1)(B). Judge Couch entered a Report and Recommendation on September 19, 2005, to which Plaintiff has timely objected. The Court therefore considers the matter de novo.

Judge Couch recommends dismissal due to failure to state a claim upon which relief can be granted (for failure to allege the personal participation of the named Defendants) and failure to exhaust state remedies for any claim properly construed as a habeas claim. In his objection, Plaintiff does not address these findings; rather he merely restates his allegations of unconstitutional conduct. The Court concludes the facts and law are correctly set out in the Report and Recommendation and require dismissal.

Accordingly, the Court adopts, in its entirety, the Report and Recommendation of the Magistrate Judge, and for the reasons announced therein, dismisses this action. As no amendment can cure the defect, this dismissal acts as an adjudication on the merits, and a judgment will enter. This dismissal counts as a “strike” pursuant to 28 U.S.C. § 1915(g).

IT IS SO ORDERED this 27th day of September, 2005.



ROBIN J. CAUTHRON
United States District Judge